

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

MALIBU MEDIA, LLC,

Plaintiff,

v.

MOHAMAD BIAZID,

Defendant.

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Case No.: 1:14-cv-01178-TSE-MSN

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**DEFENDANT’S OPPOSITION TO PLAINTIFF’S EMERGENCY  
MOTION TO CONTINUE THE HEARING ON DEFENDANT’S MOTION TO  
COMPEL AND PLAINTIFF’S MOTION FOR EXTENSION OF TIME TO COMPLETE  
DISCOVERY SET FOR AUGUST 28, 2015 AT 10:00 AM**

COMES NOW the Defendant, MOHAMAD BIAZID (“Baiazid” or “Defendant”), by counsel, Robert Powers, and hereby submits this Opposition to Plaintiff’s Emergency Motion to Continue the Hearing on Defendant’s Motion to Compel and Plaintiff’s Motion for Extension of Time to Complete Discovery Set for August 28, 2015 at 10:00 AM (the “Motion”), and in support states as follows:

1. On August 14, 2015, Defendant filed its Motion to Compel Discovery Responses from Plaintiff [CM/ECF 43]. On that same day Plaintiff filed its Motion for Extension of Time to Complete Discovery [CM/ECF 47].
2. Pursuant to this Court’s entries, Defendant’s Motion to Compel and Plaintiff’s Motion for Extension of Time to Complete Discovery have been set for hearing on August 28, 2015, at 10:00 AM.
3. On August 25, 2015, at 9:22 p.m., Plaintiff informed Defendant via email that Defendant was moving to dismiss this matter with each party paying its [sic] own fees and that

Plaintiff was moving to continue the hearing on Defendant's Motion to Compel scheduled for this Friday. This email is attached hereto as **Exhibit A**.

4. On the morning of August 26, 2015, Plaintiff's Counsel and Defendant's Counsel conferred in person regarding Plaintiff's proposed motions.
5. Defendant consented to the matter be dismissed with prejudice, but not to the extent that each party pays its own attorney fees.
6. In the afternoon of August 26, 2015, Plaintiff's Counsel and Defendant's Counsel conferred by phone regarding Plaintiff's proposed motions.
7. Plaintiff's Counsel informed Defendant's Counsel that Plaintiff would be moving to dismiss the case with prejudice, which would include an explanation of why Plaintiff was dismissing the case and why Defendant was not entitled to attorney's fees.
8. Defendant's Counsel suggest that Plaintiff simply file a single page motion to dismiss the matter with prejudice and the parties could later submit briefs regarding an award of attorney fees to Defendant.
9. Plaintiff's Counsel informed Defendant's Counsel that he would not be able to get ahold of his client and co-counsel today and that his client and co-counsel requested the Motion to Dismiss to be filed as drafted.
10. Believing that the Motion to Dismiss was simply a motion to dismiss the matter with prejudice and argument regarding attorney's fees, Defendant's Counsel agreed to consent to Plaintiff's Motion herein.
11. Near the close of business on August 26, 2015, Plaintiff filed its Motion to Dismiss this case. [CM/ECF 56]

12. In Plaintiff's Motion to Dismiss, Plaintiff seeks to dismiss this action without prejudice, or in the alternative, to dismiss this action with prejudice insofar as attorney fees are not awarded to Defendant.

13. As stated in the closing of Plaintiff's Motion to Dismiss, "[a]gain, Plaintiff does not agree to a dismissal through which it would have to pay Defendant's fees. Indeed, here, Plaintiff would much prefer to litigate than pay Defendant." Motion to Dismiss, p. 16.  
[CM/ECF 56]

14. Had Defendant's Counsel known this was the context of Plaintiff's Motion to Dismiss, Defendant's Counsel would have never agreed to Plaintiff's Motion herein.

15. The present language was not discussed or agreed to by Defendant's Counsel.

WHEREFORE, the Defendant Mohamad Baiazid respectfully requests that this Honorable Court deny Plaintiff's Motion herein.

Dated: August 26, 2015

Respectfully submitted,

MOHAMAD BIAZID

By Counsel:

/s/ Robert Powers  
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*Counsel for Defendant*

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system, which will deliver a true and correct copy of the foregoing document via CM/ECF to the following:

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By: /s/ Robert Powers.